

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 19, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1389

Introduced by Assembly Member Allen

February 18, 2011

An act to amend Section 2814.1 of, and to add ~~Sections 2814.2 and~~ *Section* 2814.3 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Allen. Vehicles: sobriety checkpoints: impoundment.

Existing law authorizes a city or a county to establish a sobriety checkpoint program in highways under its jurisdiction to check for violations of driving-under-the-influence (DUI) offenses and authorizes the board of supervisors of a county to establish, by ordinance, a combined vehicle inspection and sobriety checkpoint program to check for violations of motor vehicle exhaust standards in addition to DUI offenses.

Existing law authorizes a peace officer, whenever the peace officer determines, among other things, that a person was driving a vehicle (1) without ever having been issued a driver's license, to immediately arrest that person and cause the removal and seizure of his or her vehicle for an impoundment period of 30 days, or (2) if the person is currently without a valid driver's license, to remove the vehicle for a shorter

period of time upon issuance of a notice to appear if the registered owner or the registered owner's agent presents a currently valid driver's license and proof of current vehicle registration, or upon order of the court.

This bill would authorize the Department of the California Highway Patrol, and a city, county, or city and county, by ordinance or resolution, to establish a sobriety checkpoint program on highways within their respective jurisdictions to identify drivers who are in violation of specified DUI offenses. The bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.

The bill would require that the selection of the site of the checkpoint and the procedures for a checkpoint operation be determined by supervisory law enforcement personnel and that the law enforcement agency employ a neutral methodology for determining which vehicles to stop at the checkpoint or that all vehicles that drive through the checkpoint be stopped. The bill would also require a law enforcement agency to ensure that there are proper lighting, warning signs and signals, and clearly identifiable official vehicles, and uniformed personnel to minimize the risk to motorists and their passengers and to only operate a checkpoint when traffic volume allows for the safe operation of the program.

~~The bill would, notwithstanding other provisions of law, require that a peace officer or any other authorized person not cause the impoundment of a vehicle at a sobriety checkpoint, established pursuant to these provisions or any other law, unless at least one of a number of specified conditions applies.~~ The bill would delete the county board of supervisors authority to conduct a combined vehicle inspection and sobriety checkpoint program. The bill would require a law enforcement agency that conducts a sobriety checkpoint program to provide advance notice of the checkpoint's ~~general~~ location to the public within a minimum of 48 hours of the checkpoint operation.

This bill would require that each motorist stopped be detained so that the law enforcement officer may briefly question the driver and *use any legally permitted means* to look for specified signs of intoxication.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2814.1 of the Vehicle Code is amended to read:

2814.1. (a) A board of supervisors of a county may, by ordinance, establish, on highways under its jurisdiction, a vehicle inspection checkpoint program to check for violations of Sections 27153 and 27153.5. The program shall be conducted by the local agency or department with the primary responsibility for traffic law enforcement.

(b) A driver of a motor vehicle shall stop and submit to an inspection conducted under subdivision (a) when signs and displays are posted requiring that stop.

(c) A county that elects to conduct the program described under subdivision (a) may fund that program through fine proceeds deposited with the county under Section 1463.15 of the Penal Code.

SEC. 2. Section ~~2814.2~~2814.3 is added to the Vehicle Code, to read:

~~2814.2.~~

2814.3. (a) The Department of the California Highway Patrol may, and the governing body of a city, county, or city and county may adopt an ordinance or resolution to, establish, on highways, roads, or streets under its jurisdiction, a sobriety checkpoint program to identify drivers who are in violation of Section 23140 or 23152. The program shall be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.

(b) The selection of the site of the checkpoint and the procedures for a checkpoint operation, including, but not limited to, time and location shall be determined by supervisory law enforcement personnel.

(1) The law enforcement agency that conducts the checkpoint shall employ a neutral methodology for determining which vehicles to stop at the checkpoint or may stop all vehicles that drive through the checkpoint.

(2) The law enforcement agency shall ensure that there are proper lighting, warning signs and signals, and clearly identifiable official vehicles, and uniformed personnel to minimize the risk to

1 motorists and their passengers and shall only operate a checkpoint
2 when traffic volume allows for the safe operation of the program.

3 (3) Each motorist stopped shall be detained so that the officer
4 may briefly question the driver and *use any legally permitted means*
5 to look for signs of intoxication ~~such as alcohol on the breath,~~
6 ~~slurred speech, and glassy or bloodshot eyes.~~ If the driver does not
7 display signs of impairment, he or she should be permitted to drive
8 on without further delay.

9 (4) The law enforcement agency shall provide advance notice
10 of the checkpoint's ~~general~~ location to the public at least 48 hours
11 prior to the checkpoint operation.

12 (5) *A driver who does not wish to submit to the checkpoint shall*
13 *not raise probable cause or reasonable suspicion by simply making*
14 *a legal turn within the confines of the existing traffic laws to avoid*
15 *a checkpoint.* The location of the checkpoint shall be based on a
16 location that has a high incidence of arrests under Section 23140
17 or 23152, or a high volume of driving under the influence (DUI)
18 related accidents, and shall be determined by supervisory officers
19 of the law enforcement agency conducting the sobriety checkpoint.

20 (6) The time of day and the duration of checkpoints shall be
21 carefully reviewed and the effectiveness and safety of checkpoints,
22 as well as ~~motorists~~ *motorists'* concerns shall be taken into account.

23 (7) The law enforcement agency shall conduct the checkpoint
24 after dusk or at a time and for a duration that are reasonable and
25 effective to the objective of deterring DUI offenses.

26 (c) A driver of a motor vehicle who elects to drive through the
27 checkpoint shall stop and submit to an inspection conducted under
28 subdivision (a) when signs and displays are posted requiring that
29 stop.

30 ~~SEC. 3.— Section 2814.3 is added to the Vehicle Code, to read:~~

31 ~~2814.3. (a) Notwithstanding Section 14602.6, Section 14607.6,~~
32 ~~or subdivision (p) of Section 22651, a peace officer or any other~~
33 ~~authorized person shall not cause the impoundment of a vehicle~~
34 ~~at a sobriety checkpoint established pursuant to Section 2814.2 or~~
35 ~~any other law, unless at least one of the following applies:~~

36 ~~(1) The driver of the vehicle is suspected of driving in violation~~
37 ~~of Section 14601, 14601.2, 14601.3, 14601.5, 23140, or 23152.~~

38 ~~(2) The vehicle is subject to impoundment pursuant to Section~~
39 ~~14602.7.~~

1 ~~(3) There is probable cause to believe that the vehicle was used~~
2 ~~as the means of committing a public offense, other than a violation~~
3 ~~of Section 12500 or 14604.~~

4 ~~(4) There is probable cause to believe that the vehicle is itself~~
5 ~~evidence that tends to show that a crime has been committed or~~
6 ~~that the vehicle contains evidence, that cannot readily be removed,~~
7 ~~that tends to show that a crime has been committed, other than a~~
8 ~~violation of Section 12500 or 14604.~~

9 ~~(5) The driver of the vehicle is not driving with a valid driver's~~
10 ~~license and none of the following apply:~~

11 ~~(A) The driver is able to obtain a validly licensed driver to drive~~
12 ~~the vehicle.~~

13 ~~(B) Notwithstanding Sections 12500 and 16020, the driver is~~
14 ~~able to park or remove the vehicle in a manner that does not impede~~
15 ~~traffic or threaten public safety until a validly licensed driver can~~
16 ~~retrieve the vehicle.~~

17 ~~(C) A peace officer, or a similarly authorized traffic enforcement~~
18 ~~officer, is able to readily and lawfully remove the vehicle to a place~~
19 ~~that does not impede traffic or threaten public safety.~~

20 ~~(b) The state or local governmental agency that established or~~
21 ~~conducted the checkpoint described in subdivision (a) shall not be~~
22 ~~liable for any claims related to the parking or removal of the vehicle~~
23 ~~as described in subparagraph (B) or (C) of paragraph (5) of~~
24 ~~subdivision (a).~~

25 ~~(c) A law enforcement agency shall not conduct a combined~~
26 ~~sobriety checkpoint and vehicle inspection program.~~